

IC 32-30-7

Chapter 7. Actions for Indecent Nuisances

IC 32-30-7-1

"Indecent nuisance" defined

Sec. 1. As used in this chapter, "indecent nuisance" means a:

- (1) place in or upon which prostitution (as described in IC 35-45-4);
- (2) public place in or upon which deviate sexual conduct (as defined in IC 35-41-1-9) or sexual intercourse (as defined in IC 35-41-1-26); or
- (3) public place in or upon which the fondling of the genitals of a person;

is conducted, permitted, continued, or exists, and the personal property and contents used in conducting and maintaining the place for such a purpose.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-2

"Person" defined

Sec. 2. As used in this chapter, "person" has the meaning set forth in IC 35-41-1-22.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-3

"Place" defined

Sec. 3. As used in this chapter, "place" includes any part of a building or structure or the ground.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-4

"Prosecuting official" defined

Sec. 4. As used in this chapter, "prosecuting official" refers to public officials who have concurrent jurisdiction to enforce this chapter, including:

- (1) the attorney general;
- (2) the prosecuting attorney of the circuit in which an indecent nuisance exists;
- (3) the corporation counsel or city attorney of the city (if any) in which an indecent nuisance exists; or
- (4) an attorney representing the county in which an indecent nuisance exists.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-5

"Public place" defined

Sec. 5. As used in this chapter, "public place" means any place to which the public is invited by special or an implied invitation.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-6

Persons guilty of maintaining an indecent nuisance

Sec. 6. The following are guilty of maintaining an indecent nuisance and may be enjoined from maintaining the indecent nuisance under this chapter:

- (1) A person who uses, occupies, establishes, maintains, or conducts an indecent nuisance.
- (2) The owner, agent, or lessee of any interest in an indecent nuisance.
- (3) A person employed in an indecent nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-7

Action by prosecuting official; actions by other persons

Sec. 7. (a) If an indecent nuisance exists, a prosecuting official or any resident of the county in which the indecent nuisance exists may bring an action to abate the indecent nuisance and to perpetually enjoin the maintenance of the indecent nuisance.

(b) If a person other than a prosecuting official institutes an action under this chapter, the complainant shall execute a bond to the person against whom complaint is made, with good and sufficient surety to be approved by the court or clerk in a sum of at least one thousand dollars (\$1,000) to secure to the party enjoined the damages the party may sustain if:

- (1) the action is wrongfully brought;
- (2) the action is not prosecuted to final judgment;
- (3) the action is dismissed;
- (4) the action is not maintained; or
- (5) it is finally decided that the injunction ought not to have been granted.

The party aggrieved by the issuance of the injunction has recourse against the bond for all damages suffered, including damages to the aggrieved party's property, person, or character and including reasonable attorney's fees incurred in defending the action.

(c) A person who institutes an action and executes a bond may recover the bond and reasonable attorney's fees incurred in trying the action if the existence of an indecent nuisance is admitted or established in an action as provided in this chapter.

(d) If a prosecuting official institutes an action under this chapter (or IC 34-1-52.5 or IC 34-19-2 before their repeal) and the existence of an indecent nuisance is admitted or established in the action, the governmental entity that employs the prosecuting official is entitled to all reasonable attorney's fees incurred by the entity in instituting the action. The fees shall be deposited in:

- (1) the state general fund, if the action is instituted by the attorney general;
- (2) the operating budget of the office of the prosecuting attorney, if the action is instituted by a prosecuting attorney;
- (3) the operating budget of the office of the corporation counsel or city attorney, if the action is instituted by a corporation counsel or city attorney; or

(4) the county general fund, if the action is instituted by an attorney representing the county.
As added by P.L.2-2002, SEC.15.

IC 32-30-7-8

Venue

Sec. 8. An indecent nuisance action must be brought in the circuit or superior court of the county in which the alleged indecent nuisance is located. The action is commenced by filing a verified complaint alleging the facts constituting the indecent nuisance.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-9

Preliminary injunction; hearing; restraining order; service

Sec. 9. (a) After filing the complaint, a complainant may apply to the court for a preliminary injunction. The court shall grant a hearing on the complainant's motion for preliminary injunction not later than ten (10) days after it is filed.

(b) If an application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte restraining order restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where the indecent nuisance is alleged to exist until the decision of the court granting or refusing a preliminary injunction and until further order of the court. However, pending the court's decision, the stock in trade may not be restrained, but an inventory and full accounting of business transactions after the restraining order may be required.

(c) A restraining order issued under subsection (b) may be served by:

(1) handing to and leaving a copy of the order with a person who is:

(A) in charge of the place; or

(B) a resident of the place; or

(2) posting a copy of the order in a conspicuous place at or upon at least one (1) of the principal doors or entrances to the place.

(d) The officer serving a restraining order issued under subsection (b) shall immediately make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining alleged the indecent nuisance.

(e) Violation of a restraining order served under subsection (c) (or IC 34-1-52.5-4 or IC 34-19-2-4 before their repeal) is a contempt of court.

(f) If a restraining order is posted under subsection (c)(2), mutilation or removal of the order while it is in force is a contempt of court if the order contains a notice stating that mutilating or removing the order while it is in force is a contempt of court.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-10

Complaint; notice; hearing; service

Sec. 10. (a) In an action under this chapter:
 (1) a copy of the complaint; and
 (2) a notice of the time and place of the hearing on the application for a preliminary injunction, if the complainant has applied for a preliminary injunction under section 9(a) of this chapter;
shall be served upon the defendant at least five (5) days before the hearing.
 (b) The owners of the place where the alleged indecent nuisance is located may be served by posting the papers in the manner prescribed by section 9(c) of this chapter for serving a restraining order.
 (c) If a defendant:
 (1) is granted a request for continuance; or
 (2) moves for a change of venue or a change of judge;
the preliminary writ shall be granted as a matter of course.
As added by P.L.2-2002, SEC.15.

IC 32-30-7-11

Consolidation of trial on merits and hearing on request for preliminary injunction

Sec. 11. (a) If the complainant has applied for a preliminary injunction under section 9(a) of this chapter, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the application for the preliminary injunction:
 (1) before or after the commencement of the hearing on an application for a preliminary injunction; and
 (2) upon:
 (A) application of either of the parties; or
 (B) the court's own motion.
 (b) Any evidence received upon an application for a preliminary injunction that is admissible in the trial on the merits becomes a part of the record of the trial and does not need to be repeated as to the parties at the trial on the merits.
As added by P.L.2-2002, SEC.15.

IC 32-30-7-12

Preliminary injunction; burden of proof; temporary forfeiture; closure pending final decision on permanent injunction

Sec. 12. (a) If the plaintiff has applied for a preliminary injunction under section 9(a) of this chapter and, at the preliminary injunction hearing, the plaintiff proves by a preponderance of the evidence that the indecent nuisance exists as alleged in the complaint, the court shall issue a preliminary injunction, without additional bond, restraining the defendant and any other person from continuing the indecent nuisance.
 (b) If a defendant is enjoined under subsection (a) and it appears that the person owning, in control of, or in charge of the indecent nuisance received five (5) days notice of the hearing, the court shall:
 (1) declare a temporary forfeiture of the use of the real property upon which the indecent nuisance is located and the personal property located at the site; and
 (2) immediately issue an order closing the place against its use for any purpose until a final decision is rendered on the application

for a permanent injunction;
unless the person owning, in control of, or in charge of the indecent nuisance shows to the satisfaction of the court, by competent and admissible evidence subject to cross-examination, that the indecent nuisance complained of has been abated by the person.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-13

Effect of preliminary injunction; restraining orders

Sec. 13. An order issued under section 12(b)(2) of this chapter closing a place continues in effect while the restraining order issued under section 9(b) of this chapter is in effect. If a restraining order has not been issued under section 9(b) of this chapter, the order closing the place under section 12(b)(2) of this chapter must include an order restraining the removal or interference with the personal property and contents.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-14

Restraining orders; service; inventory

Sec. 14. If a restraining order is issued under section 9(b) or 13 of this chapter:

- (1) the restraining order shall be served under section 9(c) of this chapter; and
- (2) the inventory of the property shall be made and filed as provided in section 9(d) of this chapter.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-15

Owner of real property; payment of costs; surety; abatement of indecent nuisance; showing good faith; discharge of preliminary injunction

Sec. 15. (a) The owner of real property that has been closed or is to be closed under this chapter may appear after the filing of the complaint and before the hearing on the application for a permanent injunction and do the following:

- (1) Pay all costs incurred.
- (2) File a bond with sureties to be approved by the court:
 - (A) in the full value of the property to be ascertained by the court; and
 - (B) conditioned upon the owner immediately abating the indecent nuisance and preventing the indecent nuisance from being established or kept until the decision of the court is rendered on the application for a permanent injunction.

(b) If the defendant complies with subsection (a) and the court is satisfied:

- (1) of the good faith of the owner of the real property; and
- (2) that the owner did not know and, with reasonable care and diligence, could not have known that the real property was used as an indecent nuisance;

the court shall, at the time of the hearing on the application for the

preliminary injunction, refrain from issuing an order closing the real property or restraining the removal or interference with the personal property. If a preliminary injunction has already been issued, the court shall discharge the order and deliver the property to the owners.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-16

Owner of personal property; petition for release of property; good faith; discharge of preliminary injunction

Sec. 16. The owner of the personal property that has been restrained or is to be restrained under this chapter may appear after the filing of the complaint and before the hearing on the application for a permanent injunction and petition the court to release the personal property. If the court is satisfied that the owner:

- (1) has acted in good faith; and
- (2) did not know and, with reasonable care and diligence, could not have known that the personal property was used as an indecent nuisance;

the court shall, at the time of the hearing on the application for the preliminary injunction, refrain from issuing any order restraining the removal or interference with the personal property. If the preliminary injunction has been issued, the court shall discharge the order and deliver the property to the owner.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-17

Release of property; liens

Sec. 17. The release of any real or personal property under section 15 or 16 of this chapter does not release the property from any judgment, lien, penalty, or liability to which it is subject.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-18

Precedence of indecent nuisance action

Sec. 18. An indecent nuisance action under this chapter shall be set down for trial without delay and takes precedence over all other cases except crimes, election contests, or injunctions.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-19

Evidence

Sec. 19. In an indecent nuisance action under this chapter, evidence of the general reputation of the place is:

- (1) admissible to prove the existence of the indecent nuisance; and
- (2) presumptive evidence that a person who:
 - (A) owned;
 - (B) was in control of; or
 - (C) was in charge of;

the indecent nuisance knew the indecent nuisance existed and

used the place for an act constituting an indecent nuisance.
As added by P.L.2-2002, SEC.15.

IC 32-30-7-20

Actions by private persons; dismissal; prosecution by prosecuting attorney; costs

Sec. 20. (a) This section applies to an indecent nuisance complaint under this chapter filed by a private person.

(b) The court shall not voluntarily dismiss the complaint unless:

- (1) the complainant and the complainant's attorney file a sworn statement setting forth the reason why the action should be dismissed; and
- (2) the dismissal is approved in writing or in open court by the prosecuting attorney of the circuit in which the alleged indecent nuisance is located.

(c) If the judge believes that the action should not be dismissed, the judge may direct the prosecuting attorney to prosecute the action to judgment at the expense of the county.

(d) If:

- (1) the action is brought by a private person;
- (2) the court finds that there were no reasonable grounds or probable cause for bringing said action; and
- (3) the case is dismissed either:
 - (A) for the reason described in subdivision (2) before trial; or
 - (B) for want of prosecution;

the costs may be taxed to the person who brought the case.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-21

Burden of proof; judgment for perpetual injunction

Sec. 21. If at the permanent injunction hearing the plaintiff proves by a preponderance of the evidence that the indecent nuisance exists as alleged in the complaint, the court shall enter a judgment that perpetually enjoins:

- (1) the defendant and any other person from further maintaining the indecent nuisance at the place described in the complaint; and
- (2) the defendant from maintaining an indecent nuisance elsewhere.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-22

Order of abatement; requirements; release of property; claiming property

Sec. 22. (a) If the existence of an indecent nuisance is admitted or established as provided in section 21 of this chapter, the court shall enter an order of abatement as a part of the judgment in the case. The order of abatement must:

- (1) direct the removal of all personal property and contents that:
 - (A) are located at the place described in the complaint;
 - (B) are used in conducting the indecent nuisance; and
 - (C) have not already been released under authority of the court

- as provided in sections 15 and 16 of this chapter;
- (2) direct the sale of personal property that belongs to the defendants who were notified or appeared at the hearing, in the manner provided for the sale of chattels under execution; and
- (3) require one (1) of the following:
- (A) The renewal for one (1) year of any bond furnished by the owner of the real property under section 15(a)(2) of this chapter.
- (B) If a bond was not furnished, continue for one (1) year any closing order issued under section 12(b)(2) of this chapter at the time of granting the preliminary injunction.
- (C) If a closing order was not issued when the preliminary injunction was granted, direct the effectual closing of the place against its use for any purpose for one (1) year, unless sooner released.
- (b) The owner of a place that has been closed and not released under bond may appear and obtain a release in the manner and upon fulfilling the requirements provided in sections 15 and 16 of this chapter.
- (c) The release of property under this section does not release the property from any judgment, lien, penalty, or liability to which the property may be subject.
- (d) Owners of unsold personal property and contents seized under subsection (a) may:
- (1) appear and claim the property within ten (10) days after an order of abatement is made; and
- (2) prove to the satisfaction of the court:
- (A) that the owner is innocent of any knowledge of the use of the property; and
- (B) that with reasonable care and diligence the owner could not have known of the use of the property.
- (e) If an owner meets the requirements set forth in subsection (d), the unsold personal property and contents shall be delivered to the owner. Otherwise, the unsold personal property and contents shall be sold as provided in this section.
- (f) The officer who removes and sells the personal property and contents under subsection (e) may charge and receive the same fees as the officer would receive for levying upon and selling similar property on execution.
- (g) If an order of abatement requires the closing of a place under subsection (a)(3)(C), the court shall allow a reasonable sum to be paid for the cost of closing the place and keeping it closed.
- As added by P.L.2-2002, SEC.15.*

IC 32-30-7-23

Violation of court orders

Sec. 23. In case of:

- (1) the violation of any injunction or closing order granted under this chapter;
- (2) the violation of a restraining order issued under this chapter;
- or
- (3) the commission of any contempt of court in proceedings under

this chapter;
the court may summarily try and punish the offender. The trial may be upon affidavits or either party may demand the production and oral examination of the witnesses.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-24

Collected money paid to county treasurer; proceeds of sales applied to costs

Sec. 24. (a) All money collected under this chapter shall be paid to the county treasurer.

(b) The proceeds of the sale of the personal property under section 22 of this chapter, or as much of the proceeds as necessary, shall be applied in payment of the costs of the action and abatement, including the complainant's costs.

As added by P.L.2-2002, SEC.15.

IC 32-30-7-25

Indecent nuisances created by tenants; voidable title; reversion to owner; entry

Sec. 25. (a) This section applies to a tenant or occupant of a building or tenement, under a lawful title, who uses the place for acts that create an indecent nuisance.

(b) The owner of a place described in subsection (a) may void the lease or other title under which the tenant or occupant holds. The use of the place to create an indecent nuisance, without any act of the owner of the place, causes the right of possession to revert and vest in the owner. Without process of law, the owner may make immediate entry upon the premises.

As added by P.L.2-2002, SEC.15.